

UNITED STATES DISTRICT COURT

# DISTRICT OF NEVADA

\* \* \*

COURTNEY MOTLEY.

v

**Petitioner,**

Case No. 3:20-cv-00283-MMD-WGC

## ORDER

**STATE OF NEVADA, et. al.,**

## Respondents.

12 Petitioner Motley has filed a motion for leave to proceed *in forma pauperis* and a  
13 financial certificate (ECF No. 1) which shows that he is unable to pay the filing fee of \$5.00  
14 required to initiate this action. Accordingly, his motion for leave to proceed *in forma*  
15 *pauperis* is be granted.

16 Petitioner has submitted to the Court a pleading styled as a "motion for jail time  
17 credits," with which he appears to be seeking to challenge an alleged failure by the Nevada  
18 Department of Corrections ("NDOC") to apply credit for time served to his sentence. (ECF  
19 No. 1-1.) Petitioner's avenue for relief in this Court, if any, would be a petition for writ of  
20 habeas corpus under 28 U.S.C. § 2254. Having reviewed Petitioner's submission, the  
21 Court will dismiss this action for the following reasons.

First, a petition for writ of habeas corpus filed by a person who is not represented by an attorney must be on the correct form. See LSR 3-1. Petitioner has used the form used to bring a motion under 28 U.S.C. § 2255, which is used by *federal* prisoners seeking to challenge their sentence. Petitioner is a prisoner of the State of Nevada.

26 Second, Petitioner has a proceeding pending in this Court in which he has filed an  
27 "amended petition," which is drafted on the proper form and seeks relief based on the  
28 same or a very similar ground. See *Motley v. Gittere*, 3:20-cv-00326-RCJ-CLB (ECF

1 No. 6). Thus, this proceeding is duplicative.

2 Third, Petitioner's "motion for jail time credits" does not allege a violation of federal  
3 law. To obtain the relief he seeks in this Court he must establish that he "is in custody in  
4 violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2254(a).

5 Fourth, Petitioner has named the "State of Nevada" as the Respondent. His  
6 pleading indicates that Petitioner is incarcerated at Ely State Prison. The Court is informed  
7 and believes that the warden at that facility is William Gittere. When a prisoner files an  
8 action seeking federal habeas relief, "the prisoner must name the warden of the  
9 penitentiary where he is confined as a respondent." *Allen v. State of Oregon*, 153 F.3d  
10 1046, 1050 (9th Cir. 1998) (internal quotations omitted). "Failure to name the petitioner's  
11 custodian as a respondent deprives federal courts of personal jurisdiction." *Stanley v.*  
12 *California Supreme Court*, 21 F.3d 359, 360 (9th Cir. 1994).

13 It is therefore ordered that Petitioner's motion for leave to proceed *in forma pauperis*  
14 (ECF No. 1) is granted. The Clerk will file the "motion for jail time credits" and attachments,  
15 currently in the docket at ECF Nos. 1-1, 1-2, and 1-3.

16 It is further ordered that this action is dismissed without prejudice. The Clerk will  
17 enter judgment accordingly and administratively close this case.

18 It is further ordered that a certificate of appealability is denied, as jurists of reason  
19 would not find the Court's dismissal of this action without prejudice to be debatable or  
20 incorrect.

21 It is further ordered that the Clerk will add Aaron Ford, Attorney General for the  
22 State of Nevada, as counsel for Respondents.

23 It is further ordered that the Clerk will electronically serve upon Respondents a copy  
24 of this order. No response is necessary.

25 DATED THIS 26<sup>th</sup> day of August 2020.

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28   
MIRANDA M. DU  
CHIEF UNITED STATES DISTRICT JUDGE